Comments of

Jeffrey H. Blum
Senior Vice-President and Deputy General Counsel
DISH Network L.L.C.
(www.dish.com)

Before the
Federal Communications Commission

Public Forum to discuss
"Proposed Comcast/NBCU/GE Joint Venture"

July 13, 2010

Thank you for inviting me here today. My name is Jeff Blum and I am the Senior Vice-President and Deputy General Counsel for DISH Network. DISH is the nation's third largest pay-TV provider, with over 14 million subscribers. We pride ourselves on offering the most HD programming, cutting-edge technology and award-winning customer service.

My testimony today will focus on how a combined Comcast-NBC would impact the online video market. This topic is *immensely* important to the future of the entire video distribution industry. Comcast and NBC claim their proposed transaction is benign in nature and will only improve the online video experience. We disagree. Perhaps you're wondering why a satellite TV provider would be interested in this subject. Let me begin by outlining DISH's stake in the merger.

In order to compete with the likes of Comcast, DISH must integrate online video with our traditional satellite service. DISH is actively innovating to achieve this integration. With our partner, Echostar, we have developed products such as DISH OnDemand (which offers 10,000 VOD movies) and Sling (which allows you to watch your cable or satellite TV on any PC or mobile device). These products give DISH subscribers the online video offerings they demand; allowing them to watch what they want, when they want it.

But in order to function effectively, these technologies rely on a broadband connection. And, in order to provide our customers with the optimal viewing experience, that connection must be neutral and non-discriminatory. By non-discriminatory, I mean Internet service providers like Comcast must not interfere with DISH's data flowing through their broadband "pipe." Because Comcast is one of DISH's main competitors in the video marketplace for both linear TV service and online video, Comcast has an incentive to steer DISH subscribers to Comcast's cable service. One of the most pernicious ways for them to do that is through their control over the broadband "pipe" by discriminating against DISH's online offerings.

These broadband-enabled features mirror consumer trends in online video consumption generally. According to the Pew Internet Project, 69% of American adults have used the Internet to watch or download a video. Of these viewers, 89% have broadband at home. Clearly, online video has entered the mainstream. And, the market will only grow.

The proposed merger therefore represents a serious threat to competition in the TV industry. It is *essential* that the Commission implement strict conditions to allow for continued, legitimate competition in this industry.

Both Comcast and NBC are deeply involved in the online video market. And, both Comcast and NBC have demonstrated a propensity to leverage their market power to limit competition or push competitors out of the market completely. If allowed to combine, Comcast-NBC's unprecedented market share would further enhance its ability to discriminate against competitors, like DISH, in the online video market.

Comcast has already shown its cards, so to speak, when it comes to discrimination. We all know about the BitTorrent case where Comcast was covertly injecting reset packets into the BitTorrent streams, making it virtually impossible to use the service. Clearly, Comcast has no hesitation about blocking or degrading Internet traffic of its choosing. Once you add NBC's marquee content and partial ownership of Hulu to the mix, there is even greater incentive and ability for Comcast to discriminate against competing online video traffic.

Think of it like this: if the merger were to be approved, Comcast subscribers might get access to Hulu content in full HD. On the other hand, non-Comcast subscribers using Hulu may not have access to that HD content. Worse, non-subscribers' access to NBC's online content like Universal Studios could be blocked completely.

The merger would also present a unique ability for Comcast to engage in what I call "economic broadband discrimination."

Imagine this scenario. You are a DISH Network TV subscriber, and you have a subscription to Comcast high speed Internet service at your home that is capped at 250 Gigabit per month. Your Comcast Internet service allows you to watch online video applications like Hulu on your PC, and also powers the many broadband-enabled on-demand cinema offerings that are included as part of your DISH service. You watch TV shows on NBC.com such as "The Office" and "30 Rock," and use DISH OnDemand to order Universal Studios movies like *Gladiator, Jaws,* and *E.T.* When you receive your Comcast Internet bill at the end of the month, you find that you have been charged for exceeding your monthly cap. You call Comcast to demand an explanation. The agent tells you that all the NBC programs and Universal films you watched count against your bandwidth cap because you are NOT a Comcast video subscriber. Meanwhile, your neighbors down the street bundle their Comcast high speed Internet with Comcast Xfinity video service. Comcast does not count NBC-Universal content against their bandwidth cap simply because they subscribe to Comcast video service. Given the charges you incur by not bundling with Comcast, tell me you wouldn't think about switching to Comcast's video service? Better yet, think about the implications this sort of discrimination would have for competition in the video distribution market.

To prevent such practices, the Commission should do three things. First, it should apply its proposed open Internet rules to Comcast and prohibit all forms of discriminatory conduct on Comcast's broadband network. Second, Comcast must make transparent its "network management practices" so that the Commission and the public are well aware of any unsavory activity Comcast engages in. Finally, Comcast must offer a stand-alone, retail high-speed broadband service, and provide consumers with the ability to use third-party Internet service providers, who have been given wholesale access to Comcast's broadband "pipe."

And these conditions should be coupled with strong and decisive enforcement procedures.

These conditions would ensure competitive fair-play and give consumers choice in the online video market.

If the proposed merger is permitted, these conditions must be implemented to protect consumers and competition in the video market. Regardless of the stone-faced promises from the Comcast and NBC camps, this merger represents a very real threat to competition in the online video marketplace. Neither the Commission nor the American public can afford to take this threat lightly. Thank you.